



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2003

Lieutenant Arturo Valdez
Central Records Division
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2003-5690

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 185979.

The McAllen Police Department (the "Department") received requests for ten specified offense reports. You assert the requested information is excepted from disclosure under section 552.108 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Initially, we address the Department's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). In this case, the Department received the present requests for information on May 22, 2003. Therefore, you should have submitted your request for an attorney general opinion no later than June 6, 2003. Your letter requesting an opinion from our office has a postmark dated June 9, 2003. Thus, we find that you did not request a ruling from this office within the prescribed period. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for the attorney general's decision no later than the tenth business day after the date of receiving the written request). Consequently, we conclude the Department failed to comply with 552.301(b) by submitting an untimely request for a decision from this office.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert section 552.108 of the Government Code, a discretionary exception under the Act, which generally does not qualify as a compelling reason to withhold information from the public. *See* Open Records Decision No. 586 (1991) (providing that a governmental body may waive section 552.108 of the Government Code). Accordingly, the Department may not withhold the requested information under section 552.108 of the Government Code.

We note the submitted information contains information subject to section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the doctrine of common-law privacy and information made confidential by other statutes.

Common-law privacy protects information when (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Generally, financial information about private individuals is the type of information that may be protected under common-law privacy. Open Records Decision No. 373 at 3 (1983). In this instance, the submitted information contains an individual's insurance policy number, in which the public has no legitimate interest. *See generally* Open Records Decision No. 523 (1989) (stating that credit reports, financial statements, and financial information regarding individual may be excepted by common-law privacy). Therefore, the Department must

withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note the submitted reports contain information to which access is governed by section 1703.306 of the Occupations Code. This provision states the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

Occ. Code § 1703.306. After reviewing the information at issue, we find no evidence that any of the access provisions of section 1703.306 apply in this instance. Therefore, the Department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Also, we note the submitted information contains social security numbers that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under section 552.101 and the referenced federal provision. However, we caution the Department that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

Last, the submitted documents contain information subject to section 552.130 of the Government Code. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130. Here, the submitted information contains driver's license numbers, an identification number, license class types, license plate numbers, title numbers, and vehicle identification numbers. Therefore, the Department must withhold the information pertaining to motor vehicle records, which we have marked, under section 552.130 of the Government Code.

In summary, because the Department waived its claim under section 552.108 of the Government Code, it must release most of the submitted information to the requestor. However, it must withhold the following information, which we have marked, under section 552.101 of the Government Code in conjunction with the stated doctrine or statute: 1) the personal financial information under common-law privacy, 2) the polygraph information in accordance with section 1703.306 of the Occupations Code, and 3) if applicable, the social security numbers pursuant to the 1990 amendments to the federal Social Security Act. Additionally, the Department must withhold the motor vehicle records information we have marked under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 185979

Enc: Submitted documents

c: Mr. Ramiro S. Vargas, Jr.
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(w/o enclosures)